A.F.R.

(39)

HIGH COURT OF CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CRIMINAL APPEAL NO.457/1992

Deeda @ Jagdeshwar

Vs

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd//-
V.K.Shrivastava
Judge

Hon'ble Shri Justice Fakhriddin

Sd/-
Fakhruddin
Judge

Post for 17/08/2005

Sd/-
JUDGE
17/08/2005

(40)

HIGH COURT OF CHHATTISGARH : BILASPUR
(Division Bench)

CORAM: Hon'ble Shri Fakhruddin, J &
Hon'ble Shri Vijay Kumar Shrivastava, J.

CRIMINAL APPEAL No.457/1992

Appellant — **Deeda @ Jageshwar s/o.Luru Urao, aged 19 yeaars r/o. village Rere PS Bagbahar, Dist. Raigarh (CG).**

Vs

Respondent — **State of Chhattisgarh *Through* SHO PS Bagbahar, Dist. Raigarh (CG)**

PRESENT

Ms. Nisha Chaturvedi, Counsel for the appellant.

Mr. U.N.S. Deo, Govt. Advocate with Shri Akhil Mishra, Panel Lawyer for the respondent/State.

JUDGMENT

(Delivered on 17 /08/2005)

Per Vijay Kumar Shrivastava, J.

This appeal is directed against the judgment of conviction and order of sentence passed by IInd Additional Sessions Judge, Raigarh, in Sessions Trial No.148/91 on 05/02/1992 by which the appellant has been held guilty for committing offence of murder punishable under Section 302 of the I.P.C., and was sentenced to undergo imprisonment for life and to pay a fine of Rs.200/-, in default of payment of fine, to undergo additional R.I. for one month.

2) Deceased Shushma is the daughter of Shobit Ram and the appellant is his brother-in-law. The date of incident is 06/08/1991. Prior to the date of incident, appellant took Shushma along with him for keeping her as his wife, but the family members of the accused did not allow her, therefore, Shushma came back to her parental house. Thereafter, appellant contacted marriage with an another woman and Shushma refused to join the company of appellant. The relation by accused with Shushma was also disliked by Shobit Ram and his family members. Annoyed with all these facts, on 06/08/1991 appellant came to the house of Shobit Ram and by inflicting multiple injuries by an axe on the neck of Shushma caused her to death. Shobit witnessed inflicting multiple injuries by the appellant on the neck of his daughter Shushma. Appellant after killing Sushma threw the axe on the spot and ran-away. Shobit Ram raised the cry while the appellant was inflicting injuries by an axe on the neck of Sushma, On hearing the voice, Hari Singh came there. Hari Singh and Shobit Ram reached near Shushma and found, Shushma was dead. Shobit Ram lodged first information report and merg intimation at Police Station Bagbahar.

3) Police officials came there and prepared panch nama of the dead body and sent the same for post mortem. During the investigation axe left by the appellant at the spot was seized from Shobit Ram who had produced the same. From the spot, blood stained, earth and simple earth were seized. Map was drawn by the Patwari and identification of axe was also conducted. Clothes of accused were seized. Axe was also sent to Medical Officer for opinion. Statements of witnesses were recorded. Dr. Kailash Dubey conducted autopsy and in his report he described various injuries found on the body of Ku. Shushma and opined that Ku. Shushma died due to shock and coma (severe hemorrhage) and opined the death

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homicidal in nature. All the wounds found on the body of the deceased Shushma were caused by sharp object and ante mortem in nature. He further opined that the injuries found on the body of Shushma might have been caused with axe. After completion of investigation challan was filed in the Court of Judicial Magistrate First Class, Raigarh, who committed the case to Sessions for trial.

4) Learned trial Court framed charge under Section 302 of the I.P.C., against the appellant. Charge was read over and explained to him who abjured his guilt. The defence of the appellant was that he is innocent and has been falsely implicated in this case. Learned trial Court evaluating the evidence held appellant guilty for committing offence punishable under Section 302 of the I.P.C. accordingly convicted and sentenced him.

5) Parties are heard and record of trial Court perused.

6) Doctor Kailash Dutt Dubey (PW/13) in his evidence deposed that on 07/08/1991 he conducted autopsy and on examination of dead body of Ku. Shushma he found the following injuries present on her body.

1) Incised wound in the size of 3" x 2" x 2" deep mid neck in front right side.
2) Incised wound at base of neck in front in the size of 3"x 2"x 2½" deep right side.
3) Incised wound left side base of neck oblique in the size of 2" x 1" x 2 ½" deep.
4) Incised wound at left side supra scapular space shoulder in the size of 3 ½" x 2" x 2 ½" deep.

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5) Mid neck left side lateral in the size of ½" x ½" x 1" deep incised wound.

7) He has further deposed that on opening the wound No.2 i.e., incised wound at the base of neck he found internal jugular vein cut, cordial artery cut and in No.3 trachia left side artery and vein cut. He further deposed that the death was caused due to shock and hemorrhage. All the injuries were caused by the sharp object and the death was homicidal in nature. His report is Ex.P/17. He also after examination of the axe opined that the deceased received all the injuries from the sharp edge of axe. Neither his evidence has not been challenged in cross-examination nor his evidence suffers from any infirmity, therefore, from the evidence of Dr. Kailash Dutt Dubey, it was proved that Ku. Shushma died as a result of multiple injuries caused on vital part of her body i.e., neck by sharp object like an axe.

8) Shobit Ram, the father of the deceased Shushma, in his evidence deposed that around 5.00 pm he came back to his house from market. He saw his daughter and appellant in the verandah. Appellant saw him and instantly inflicted three blows by Kulhadi (axe). He gave two blows on the neck of Shushma and one blow near her chest. Shushma fell down and appellant threw Kulhadi (axe) on the spot and ran away. He shouted that Deeda (appellant) killed Shushma with Tangia. Hari Singh on hearing the voice rushed to the spot. At that time appellant was running away from the spot. They went near Shushma and saw injuries on her body, by which time she had lost her breathe.

9) Hari Singh (PW/2) in his statement deposed that around 5.00 p.m. he heard the cries of his uncle who raised voice that Hari Singh

"*Dowdo Deeda ne Shushma ko Tangia se mardiya hey*". He hearing the voice rushed and reached to the house of Shobit Ram. He saw the dead body of Shushma lying in the verandah and the appellant was running away from there. He saw injuries on the neck and near the chest on the body of Shushma. Shushma was bleeding and also died.

10) Somnath (PW/3), Dhoond Ram (PW/10), Ku. Nan Bai (PW/12) have deposed in their statement that from Shobit Ram they came to know that Dida had killed Shushma by inflicting injuries by axe. They saw the dead body of Shushma and also injuries on her body. They also saw the axe lying there.

11) Shobit Ram (PW/1) and Ganesh Ram Sahu, Head Constable (PW/17) have proved first information report (Ex.P/1) and Merg Intimation (Ex/P.2) Seizure of the axe on producing the same by Shobit Ram has been proved by Shobit Ram (PW/1) and Kesav Narayan (PW/16), A.D. Manik Puri (PW/18) had sent the axe to medical officer vide Ex.P/22 that has been proved by A.D. Manik Puri (PW/18).

12) The sole contention of the appellant is that Shobit Ram who is eye witness, the witnesses who saw the appellant running away from the spot and other witnesses to whom soon after the incident Shobit Ram, narrated the incident are near relatives of the deceased, therefore, their version should not be accepted.

13) In **Ram Udgar Singh Vs. State of Bihar, reported in 2004 (10) SCC 443,** Hon'ble the Apex Court has observed at para 7 as below:

> *"7 – Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation or a friend*

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would not conceal the actual culprit and make allegations against an innocent present. Foundation has to be led if a plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyze the evidence to find out whether it is cogent and credible".

14) In the instant case, no doubt, Shobit Ram (PW/1), Hari Singh (PW/2) Somnath (PW/3) Ku. Nan Bai (PW/12) are near relatives of the deceased. Here it is also to be remembered that the appellant is also thickly related to the deceased and Shobit Ram. After scrutinizing the evidence meticulously of all those witnesses nothing could be found which may create any doubt on the credibility of these witnesses. Neither their evidence is shacking nor there is any reason for them to implicate falsely the appellant in the instant case. The evidence of eye witness Shobit Ram (PW/1) is corroborated by other witnesses and also by the first information report and post mortem report. From all the evidence it was proved that the appellant inflicting multiple injuries on the vital part i.e., neck of Shushma by deadly weapon axe has caused her death.

15) The evidence of Shobit Ram (PW/1), Hari Singh (PW/2), Somnath (PW/3) Dhoond Ram (PW/10), Dharam Ram (PW/11) and Ku. Nan Bai (PW/12) is sufficient to establish that the appellant and Shushma had illicit relation. Earlier appellant took Shushma to his house for keeping her as his wife, but family members of the appellant did not allow it, as a result of that Shushma came back to her parental house, thereafter appellant contacted marriage with an another woman and Shushma declined to keep any relation with accused, therefore, it appears to be the motive behind the murder.

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16) Taking into consideration the deadly weapon used, several injuries inflicted on the vital part of the deceased and the motive behind it, do clearly establish that the appellant intentionally by inflicting various injuries on the neck of the deceased Shushsma caused her death, therefore, was guilty of committing offence of murder and the trial Court has rightly arrived at the finding. There is no infirmity in the judgment of the trial Court.

17) In the result, the appeal fails and is accordingly dismissed.

Sd/-
Fakhruddin
Judge

Sd//-
V.K.Shrivastava
Judge

Raju